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From:

Sent: Thursday, April 07, 2011 2:38 PM

To:

Cc:

Subject: Section 1341

based on your memorandum and our phone conversations over the last week regarding § 1341, we concur with your conclusion that § 1341 is not applicable to the situation presented and that the taxpayer's request for refund should be denied.

In general, based on the limited set of facts presented, the taxpayer has not met the requirements of either §§ 1341(a)(1) or (2). Under § 1341(a)(1), § 1341 applies only if an item was included in gross income for a prior taxable year because it appeared that the taxpayer had an unrestricted right to such item. In the present situation, the default judgment for fraud entered against the defendants should be sufficient to establish that the taxpayer did not have an unrestricted right to the income item, which would preclude the application of § 1341.

Additionally, § 1341(a)(2) provides that § 1341 applies only if a deduction is allowable for the taxable year because it was established after the close of such prior taxable year that the taxpayer did not have an unrestricted right to such item of income or to a portion of such item. Section 1341 only applies where the taxpayer is entitled to a deduction under another provision of the tax code. In the present situation, it is unlikely that another code section will provide a deduction. The taxpayer is not entitled to a deduction under § 162, as these costs are not ordinary and necessary business expenses of the taxpayer.

Moreover, even if the taxpayer is deemed to have stepped into the shoes of the defendants, a deduction is not allowed for the taxable year at issue. An accrual basis taxpayer cannot take a deduction for an item until economic performance with respect to such item occurs. In the present situation, economic performance would not occur until the taxpayer funds the qualified settlement fund and there are no facts to indicate that the taxpayer has done so. As the taxpayer has not funded the qualified settlement fund, economic performance has not been met and § 1341 would not apply because the taxpayer has not established that a deduction is allowable for the taxable year at issue.

if you have any questions, please call me, my direct dial number is